ing or grand stand, notwithstanding their defective condition resulting from the carelessness of a contractor, and from no negligent act or fault whatever of the owner. *Francis v. Cockrell*, L. R. 5 Q. B. 501; *Barrett v. Imp. Co.*, 174 N. Y. 311. There is little tendency to establish the proposition that the same duty that requires an owner to be responsible for the safe condition of the premises also requires him to be equally responsible for the manner in which the exhibition is conducted. Yet a somewhat analogous principle has been sanctioned by the Indiana court, upon the theory that a peculiar relation was created between the parties, and that the owner, having licensed and permitted the exhibition, could not escape liability by an appeal to the independent contractor doctrine. *Conradt v. Clauve*, 93 Ind. 476.

NUISANCE—POLLUTION OF ICE FIELD—INJUNCTION.—AMERICAN ICE CO. v. CATSKILL CEMENT CO., 88 N. Y. Supp. 456.—*Held*, that the plaintiff was entitled to an injunction restraining the defendant during the ice harvesting season from so operating its manufacturing establishment as to cause dust, cinders, and other substances to settle upon plaintiffs' ice fields, thereby rendering the ice unmerchantable.

This case is, undoubtedly, the first one to be found in the reports affording a remedy of this nature in respect to ice fields, concerning which the law has been slow in developing. The destruction of ornamental and useful trees by the gases from a brick kiln is such irreparable injury as a court of equity will enjoin. *Campbell v. Seaman*, 63 N. Y. 568. That case also held that it was immaterial that the injury was not continuous, but only occurred when the wind was in a certain direction. The fact that the defendant was chargeable with no negligence does not affect the case. *Bohan v. Port Jervis G. S. Co.*, 122 N. Y. 18.

STREET RAILWAYS—INJURY TO PASSENGER—RIDING ON PLATFORM.—BRUMNCHON V. RHODE ISLAND CO., 58 Atl. (R. I.) 656. *Held*, that a passenger thrown from the platform of an electric street car on which he is riding, can recover from the company though his riding there contributed to the injury.

It is well settled that any person standing on the platform of steam cars in motion is guilty of contributory negligence if his being there partly caused the injury. *Hickey v. Boston, etc., R. Co.*, 14 Allen 421; *Memphis, etc., R. Co. v. Salinger*, 46 Ark. 528. On the other hand, it is not held, as a rule, that riding on the platform of horse cars is negligent; *Nolan v. Brooklyn R. Co.*, 87 N. Y. 63; even though there are seats inside. *Bruno v. Brooklyn R. Co.*, 5 N. Y. Misc. 327. In regard to electric railways there seems to be no case directly in point. The cases here all turned on the crowded condition of the cars or some similar circumstance which excused the riding on the platform. *Wilde, v. Lynn & Boston, etc., R. Co.*, 163 Mass. 533; *Reber v. Pittsburg, etc. Co.*, 179 Pa. 339. The best course is probably, as in the present case, to leave it to the jury to say whether on the particular car in question the speed was such as to make it negligence to ride on the platform when there is room inside.

WILLS—DESCENT OF BURIAL LOTS—RESIDUARY DEVISE.—IN RE WALDRON ET AL, 58 Atl. 458 (R. I.).—*Held*, that a burial lot is not included under a general residuary clause, but descends to heirs as intestate property.

The ownership of lots in a cemetery is a qualified property, somewhat analogous to an exclusive easement. *Sohier v. Trinity Church*, 109 Mass. 1; *Cemetery v. Buffalo*, 46 N. Y. 503. It is subject to the police power, which may not only prohibit future interments, but may cause the removal of bodies

already buried. *Page v. Symonds*, 63 N. H. 17. But a burial lot is regarded as property in which title may descend to heirs; *Wright v. Cemetery*, 112 Ga. 884; and there is sufficient legal possession to maintain trespass against a tort feasor. *Meagher v. Driscoll*, 99 Mass. 281. A mortgage of a burial lot is not void as against public policy. *Lantz v. Buckingham*, 11 Abb. Pr. N. S. 64. But see, *contra*, *Thompson v. Hickey*, 59 How. Pr. 434. The decision in the principal case is based upon the theory that while a burial lot is property, it has been so limited and qualified in respect to the ordinary attributes of real property as to raise a presumption that a testator would not intend that it should pass under a residuary clause.

WILLS—EXTRINSIC DOCUMENTS—INCORPORATION BY REFERENCE.—APPEAL OF BRYAN, 58 Atl. (Conn.) 748. Where a clause in a will gave a sum of money to be held in trust "for purposes set forth in a sealed letter which will be found with the will," *held*, that such words do not designate a specific existing document with such definiteness as to admit of its incorporation in the will.

There is no question but that an extrinsic paper to be incorporated in a will must be in existence at the time of the will and must be referred to therein. *In re Sunderland*, L. R. 1 P. & D. 198; *Newton v. Seaman's Friend Society*, 130 Mass. 91. But the amount of definiteness required in the incorporating clause is uncertain. In *Allen v. Maddock*, 11 Moore P. C. 427, parol evidence was admissible to show what paper was referred to in the will and it was no objection that other papers might have been found which would have answered the description. Similarly, *Templeman v. Martin*, 1 Nev. & Man. 576. But most courts have been reluctant to incorporate in a will extraneous papers unless they clearly are a part of the will. And as, in the present case, the reference must be certain as to the exact paper and as to its existence at the time of the will. *In re Smart*, 1902 L. R. P. D. 238; *Estate of Young*, 123 Cal. 342; *Phelps v. Robbins*, 40 Conn. 273.

WILLS—FORFEITURE CLAUSE—STIPULATION AGAINST CONTEST.—IN RE FRIEND'S ESTATE, 58 Atl. 853 (Pa.).—*Held*, that a provision in a will, annulling a bequest if the validity of the instrument be attacked by the legatee, is inoperative if there is probable cause for instituting such contest. Mitchell, C. J., and Potter, J., *dissenting*.

There is a wide diversity of opinion upon this question. In support of the decision in the principal case it is urged that to exclude all contests when reasonable ground exists for believing that the testator was insane or unduly influenced at the time of making the will is to intrench fraud and coercion. *Lee v. Colston*, 5 T. B. Mon. 246; *Jackson v. Westerfield*, 61 How. Prac. 399. Squarely opposed to these authorities, however, is the weight of opinion in the United States. *Rogers v. Law*, 66 U. S. 253; *Bradford v. Bradford*, 19 Ohio St., 546; *Breihaupt v. Baushett*, 1 Rich. Eg. 465 (S. C.); *Thompson v. Gaunt*, 82 Tenn. 310; *Donegan v. Wade*, 70 Ala. 501; *In re Riegle's Estate*, 32 N. Y. Supp. 168. The English rule in respect to legacies treats the condition as void when there exists *probabilis causa litigandi; Morris v. Burroughs*, 1 Ath. 404; but this doctrine is denied where lands are concerned. *Cooh v. Turner*, 15 M. & W. 727. But there seems to be no substantial ground for distinguishing between real and personal property. 2 *Jarman*, 58. A suit to construe the provisions of the will does not violate the condition. *Black v. Herring*, 79 Md. 146. And such conditions are always to be construed strictly, as they divest estates already vested. *Appeal of Chew*, 45 Pa. 228.